



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Ms. Vanessa Ruiz Boling
Administrator
Fort Worth Human Relations Commission
1000 Throckmorton Street
Fort Worth, Texas 76102

OR96-2097

Dear Ms. Ruiz Boling:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101761.

The Fort Worth Human Relations Commission (the "FWHRC") has received a request for a copy of "any and all records, information, including, but not limited to, notes, letters, documents, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions allegation summary sheets, in-room and/or final reports, status reports, investigative reports, computer discs, and any records relevant to and/or generated in connection with" a former employee's charge of discrimination against a private corporation under the jurisdiction of the Fort Worth Human Relations Commission under EEOC/HRR number 310950574."

You contend, however, that while the request implicates a large volume of information which is public information contained within Attachment B and to which you do not object to releasing, the request also includes information which the FWHRC asserts is confidential in nature and exempt from disclosure under sections 552.101 and 552.111 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

The FWHRC is a duly designated fair employment practice agency ("FEP")¹ under federal regulation and local authorization. 25 C.F.R. § 1601.74(a), Fort Worth, Tex., Rev. Ordin., art. II, § 17-16 at p. 1208.1. The Equal Employment Opportunity Commission ("EEOC"), in cooperation with the FWHRC, the local agency charged with the administration of state fair employment practices laws within the municipality of Fort Worth, is responsible for enforcing the provisions of Title VII of the 1964 Civil Rights Act prohibiting employment discrimination. 42 U.S.C. §§ 2000e-2, 2000e-3, 2000e-5, 2000e-5(c). To this end, the EEOC entered into a workshare agreement with FWHRC to establish effective and integrated resolution procedures. 29 C.F.R. § 1601.13(c). FWHRC, in its workshare agreement with the EEOC, agrees to comply with EEOC requirements. *Worksharing Agreement between Fort Worth Human Relations Commission and Equal Employment Opportunity Commission For Fiscal Year 1996*, Sept. 18, 1995, Fort Worth, Tex.-EEOC, art. VA, VB at p.6. We observe that an independent governmental agency may be considered to be acting as the agent of another governmental entity even though no statute expressly denominates one as the agent of the other. Attorney General Opinion JM-919 (1988). Additionally, we note that exceptions to disclosure of information in the hands of the principal may also apply to such records in the hands of the agent. See Attorney General Opinion JM-446 (1986).

The instant request deals with information developed as a consequence of an employment discrimination charge filed with the FWHRC. We note that a Fort Worth City ordinance states that charges filed before the FWHRC are not public.² Fort Worth, Texas Revised Ordinance, art. II, § 17-69(c)(1) at p. 1212, 29 C.F.R. § 1601.22. Additionally, under section 1601.26 of title 29 of the Code of Federal Regulations governing confidentiality of EEOC endeavors:

(a) Nothing that is said or done during and as part of the informal endeavors of the Commission to eliminate unlawful employment practices by informal methods of conference, conciliation, and persuasion may be made a matter of public information by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. This provision does not apply to such disclosures to the representatives of Federal, State or local agencies as may be

¹In order to qualify as an FEP, the State or local fair employment practice agency or authorities which qualify under section 706(c) of Title VII [42 U.S.C.A. § 2000e-5(c)] must have a fair employment practice law which makes unlawful employment practices based upon race, color, religion, sex national origin or disability. 29 CFR § 1601.70 (a).

²Although charges are not public, we observe that in Attachment B the FWHRC has released information pertaining to the charge, including statements from witnesses to the respondent's attorney, the original requestor of information, as provided through the exception in title 29 of the Code of Federal Regulations, section 1601.22.

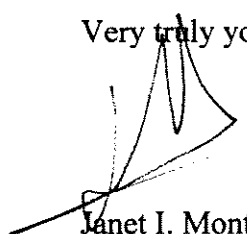
appropriate or necessary to the carrying out of the Commission's functions under Title VII [42 U.S.C.A. § 2000e *et seq.*]. *Provided, however,* that the Commission may refuse to make disclosures to any such agency which does not maintain the confidentiality of such endeavors in accord with this section or in any circumstances where the disclosures will not serve the purposes of the effective enforcement of Title VII [42 U.S.C.A. § 2000e *et seq.*]

Consequently, disclosure to the public of records concerning informal processes of conference, conciliation and persuasion, or any information obtained by the EEOC during investigation of a charge is precluded. It is observed that where either the FWHRC or EEOC determines after an investigation that there is reasonable cause to believe that the charge is true, it then must engage in informal methods of conference, conciliation, and persuasion, but that nothing said or done during and as a part of such informal endeavors may be made public by the EEOC, its officers or employees, or the FWHRC as a result of its workshare agreement, or used as evidence in subsequent proceedings without the written consent of the persons concerned. 42 U.S.C.A. § 2000e-5 (b). *Id.* There is no information provided by the requestor in the instant case to indicate the charging party has given consent to release the information.

In conclusion, a federal statute or administrative regulations enacted pursuant to statutory authority, such as those in the instant case, can provide statutory confidentiality for purposes of section 552.101. Open Records Decision No. 476 (1987) at 5. You must withhold the documents.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Very truly yours,



Janet I. Monteros
Assistant Attorney General
Open Records Division

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³We need not address the exception raised under section 552.111 under the facts of this case.

Ref.: ID# 100159

Enclosures: Submitted documents

cc: Ms. Janet E. Ritz
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Houston, Texas 77002
(w/o enclosures)